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AO 242 (12/11) Petition for a Writ of Habeas Corpus Under 28 U.S.C. § 2241

2024 FEB 20 PM 4:16

UNITED STATES DISTRICT COURT

for the
Western District of PennsylvaniaMarcos Antonio Rivera-Rivera*Petitioner*

v.

S. Barlett, Warden - FCI McKean*Respondent**(name of warden or authorized person having custody of petitioner)*

Case No. _____

(Supplied by Clerk of Court)

PETITION FOR A WRIT OF HABEAS CORPUS UNDER 28 U.S.C. § 2241

Personal Information

1. (a) Your full name: Marcos Antonio Rivera-Rivera
- (b) Other names you have used: _____
2. Place of confinement: _____
 - (a) Name of institution: FCI McKean
 - (b) Address: P.O. Box 8000
Bradford, Pennsylvania 16701
 - (c) Your identification number: 50582-069
3. Are you currently being held on orders by:

☒ Federal authorities
 ☐ State authorities
 ☐ Other - explain: _____
4. Are you currently:

☐ A pretrial detainee (waiting for trial on criminal charges)

☒ Serving a sentence (incarceration, parole, probation, etc.) after having been convicted of a crime

If you are currently serving a sentence, provide:

 - (a) Name and location of court that sentenced you: U.S. District Court - District of Puerto Rico
 - (b) Docket number of criminal case: 3:17-CR-0448-01
 - (c) Date of sentencing: 09/27/2019

☐ Being held on an immigration charge
 ☐ Other (explain): _____

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Decision or Action You Are Challenging

5. What are you challenging in this petition:

☐ How your sentence is being carried out, calculated, or credited by prison or parole authorities (for example, revocation or calculation of good time credits)☐ Pretrial detention☐ Immigration detention☐ Detainer☒ The validity of your conviction or sentence as imposed (for example, sentence beyond the statutory maximum or improperly calculated under the sentencing guidelines)☐ Disciplinary proceedings☐ Other (explain):

6. Provide more information about the decision or action you are challenging:

(a) Name and location of the agency or court: U.S. District Court - Puerto Rico(b) Docket number, case number, or opinion number: 3:17-CR-0448-01(c) Decision or action you are challenging (for disciplinary proceedings, specify the penalties imposed):
Conviction for §924(c), an illegal conviction(d) Date of the decision or action: Sentenced on 09/27/2019

Your Earlier Challenges of the Decision or Action

7. First appeal

Did you appeal the decision, file a grievance, or seek an administrative remedy?

☒ Yes☐ No

(a) If "Yes," provide:

(1) Name of the authority, agency, or court: U.S. District Court of Appeals(2) Date of filing: 09/30/2019(3) Docket number, case number, or opinion number: 19-2052(4) Result: Direct Appeal denied(5) Date of result: Approximately October 7, 2022

(6) Issues raised:

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(b) If you answered "No," explain why you did not appeal:

8. **Second appeal**

After the first appeal, did you file a second appeal to a higher authority, agency, or court?

☐ Yes ☒ No

(a) If "Yes," provide:

(1) Name of the authority, agency, or court:

(2) Date of filing:

(3) Docket number, case number, or opinion number:

(4) Result:

(5) Date of result:

(6) Issues raised:

(b) If you answered "No," explain why you did not file a second appeal:
understand how to do it on my own.

No attorney, and did not

9. **Third appeal**

After the second appeal, did you file a third appeal to a higher authority, agency, or court?

☐ Yes ☒ No

(a) If "Yes," provide:

(1) Name of the authority, agency, or court:

(2) Date of filing:

(3) Docket number, case number, or opinion number:

(4) Result:

(5) Date of result:

(6) Issues raised:

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(b) If you answered "No," explain why you did not file a third appeal: I did not know my legal rights or how to pursue any other appeal after I lost my attorney.

10. Motion under 28 U.S.C. § 2255

In this petition, are you challenging the validity of your conviction or sentence as imposed?

☐ Yes ☒ No

If "Yes," answer the following:

(a) Have you already filed a motion under 28 U.S.C. § 2255 that challenged this conviction or sentence?

☐ Yes ☐ No

If "Yes," provide:

(1) Name of court: _____

(2) Case number: _____

(3) Date of filing: _____

(4) Result: _____

(5) Date of result: _____

(6) Issues raised: _____

(b) Have you ever filed a motion in a United States Court of Appeals under 28 U.S.C. § 2244(b)(3)(A), seeking permission to file a second or successive Section 2255 motion to challenge this conviction or sentence?

☐ Yes ☒ No

If "Yes," provide:

(1) Name of court: _____

(2) Case number: _____

(3) Date of filing: _____

(4) Result: _____

(5) Date of result: _____

(6) Issues raised: _____

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- (c) Explain why the remedy under 28 U.S.C. § 2255 is inadequate or ineffective to challenge your conviction or sentence: **I am "Time Barred" from filing under §2255.**

11. Appeals of immigration proceedings

Does this case concern immigration proceedings?

☐ Yes

☒ No

If "Yes," provide:

- (a) Date you were taken into immigration custody: _____
(b) Date of the removal or reinstatement order: _____
(c) Did you file an appeal with the Board of Immigration Appeals?

☐ Yes

☐ No

If "Yes," provide:

- (1) Date of filing: _____
(2) Case number: _____
(3) Result: _____
(4) Date of result: _____
(5) Issues raised: _____

- (d) Did you appeal the decision to the United States Court of Appeals?

☐ Yes

☐ No

If "Yes," provide:

- (1) Name of court: _____
(2) Date of filing: _____
(3) Case number: _____

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(4) Result: _____

(5) Date of result: _____

(6) Issues raised: _____

12. **Other appeals**

Other than the appeals you listed above, have you filed any other petition, application, or motion about the issues raised in this petition?

☐ Yes

☒ No

If "Yes," provide:

(a) Kind of petition, motion, or application: _____

(b) Name of the authority, agency, or court: _____

(c) Date of filing: _____

(d) Docket number, case number, or opinion number: _____

(e) Result: _____

(f) Date of result: _____

(g) Issues raised: _____

Grounds for Your Challenge in This Petition

13. State every ground (reason) that supports your claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground.

GROUND ONE:

Conviction under 18 U.S.C. § 924(c) is constitutionally illegal and must be vacated.

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(a) Supporting facts *(Be brief. Do not cite cases or law.)*:

I was convicted under an illegal statute, that is not a crime of violence under
conspiracy, under United States v. Davis, 139 S.Ct. 2319; 204 L.Ed.2d 757 (2019). My
conviction for §924(c) is keeping me in prison, but is not a crime of violence.

(b) Did you present Ground One in all appeals that were available to you?

☒ Yes

☐ No

GROUND TWO: Ineffective Assistance of Counsel/Deficient Performance

(a) Supporting facts *(Be brief. Do not cite cases or law.)*:

My lawyer didn't follow through with my appeal, instead chose to withdraw which
left me unable to complete the appellate process. She failed to perform her "Due
Diligence" as required as my appointed attorney. This denied me the opportunity to
take my appeal all the way through the process, which could have resulted in my
release much earlier.

(b) Did you present Ground Two in all appeals that were available to you?

☐ Yes

☒ No

GROUND THREE:

(a) Supporting facts *(Be brief. Do not cite cases or law.)*:

(b) Did you present Ground Three in all appeals that were available to you?

☐ Yes

☐ No

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GROUND FOUR:

(a) Supporting facts *(Be brief. Do not cite cases or law.)*:

(b) Did you present Ground Four in all appeals that were available to you?
☐ Yes ☐ No

14. If there are any grounds that you did not present in all appeals that were available to you, explain why you did not:

Request for Relief

15. State exactly what you want the court to do: Vacate my conviction and sentence under 18 U.S.C. § 924(c) and order my immediate release from custody of the Bureau of Prisons, and any other relief this Court may feel is appropriate in this instance.

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Declaration Under Penalty Of Perjury

If you are incarcerated, on what date did you place this petition in the prison mail system:

February 13, 2024

I declare under penalty of perjury that I am the petitioner, I have read this petition or had it read to me, and the information in this petition is true and correct. I understand that a false statement of a material fact may serve as the basis for prosecution for perjury.

Date:

12/02/24

Marcos A. Rivera Rivera

Signature of Petitioner

Signature of Attorney or other authorized person, if any